

Original Transcript

FINRA DISPUTE RESOLUTION

In the Matter of the
Arbitration Between:

WELLS FARGO INVESTMENTS, LLC

Claimant/Counter-Respondent

and

Case No. 10-00773

KENNETH C. SHAFFER

Respondent/Counter-Claimant

ARBITRATION

March 18, 2011
9:00 a.m.

1221 Locust Street
St. Louis, MO

CELENA D. MOULTON, RPR, CSR



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Arbitration

March 18, 2011

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FINRA Dispute Resolution

In the Matter of the)
Arbitration Between:)
)
Claimant/Counter-Respondent) Case No. 10-00773
)
Wells Fargo Investments, LLC)
and)
Respondent/Counter-Claimant)
)
Kenneth C. Shaffer)

ARBITRATION

Before:

Thomas D. Reese, Presiding Chairperson
Laurel Littman Gothelf, Arbitrator
Marilyn G. McClaskey, Arbitrator

APPEARANCES:

Ronald P. Kane,
Attorney at Law,
for Wells Fargo;

Kenneth C. Shaffer,
Pro Se.

CELENA D. MOULTON, RPR, CSR



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1 CHAIRMAN: We are on the record in the
2 matter of Wells Fargo -- your official title is Wells
3 Fargo what, Investments?

4 MR. KANE: Wells Fargo Investments, LLC.

5 CHAIRMAN: And then the respondent is
6 Kenneth Shaffer. Let's identify ourselves. First of
7 all I'm Tom Reese. To my right is Laura Gothelf, to my
8 left is Marilyn McClaskey. And you are Mr. Kane?

9 MR. KANE: Ryan Kane, counsel for Wells
10 Fargo. And to my immediate left is Ms. Mary Mortensen,
11 a corporate representative for Wells Fargo.

12 ARBITRATOR: And Mr. Shaffer is here as
13 well. And we have tested the machine and it appears to
14 be taping appropriately.

15 MR. KANE: May I shut the door,
16 Mr. Chairman?

17 CHAIRMAN: Yes, please.

18 I've introduced the arbitrators in this
19 matter and ask if there are any further disclosures that
20 need to be made by any of us that have not already been
21 made? I have no further disclosures to add.
22 Ms. McClaskey?

23 ARBITRATOR MCCLASKEY: I have no further
24 disclosures.

25 CHAIRMAN: Ms. Gothelf.



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1 ARBITRATOR GOTHELF: I have none.

2 CHAIRMAN: Okay. Having introduced the
3 arbitration panel and indicated disclosures already
4 having been made, none further, do the parties accept
5 the constitution -- not the constitution, but the
6 arbitration panel as set forth? Mr. Kane?

7 MR. KANE: Yes.

8 CHAIRMAN: And Mr. Shaffer?

9 MR. SHAFFER: Yes.

10 CHAIRMAN: And all of the arbitrators have
11 previously taken an oath which has been submitted to
12 FINRA. For the record, we have submitted our properly
13 executed oaths and submitted them to FINRA. We want to
14 formally open the hearing.

15 This controversy has been submitted to this
16 panel of arbitrators for hearing. And in accordance
17 with the code of arbitration that has been submitted in
18 accordance with your code of arbitration procedure, the
19 panel is authorized to determine each of the matters set
20 forth and the statements submitted and filed with FINRA
21 Dispute Resolution..

22 Unless directed otherwise by the law, all
23 awards rendered pursuant to the code will be final and
24 not subject to appeal.

25 It is suggested that no interruptions be



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1 made during an individual's testimony. That would be
2 interruptions by us or other -- or counsel or parties
3 during the examination of a particular witness. By
4 that, I'm suggesting that we want to hear a full and
5 truthful response. If there is some misunderstanding,
6 if there's some clarification that's necessary, that can
7 be done at the appropriate time.

8 And I should add to that at the end of
9 testimony, any of us, the arbitrators may have some
10 questions. And I'm going to ask my colleagues to hold
11 their questioning until the testimony of that particular
12 witness is through, because often questions are cleared
13 up with further questions by counsel or by Mr. Shaffer.

14 We, as -- well, I am reading from a script
15 which goes on to say the submission of the matter to
16 arbitration will not preclude any right of the
17 association that it would otherwise be authorized to
18 adopt, administer or enforce.

19 If any matter comes to the attention of
20 this panel during and in connection with the panel's
21 participation in this proceeding, either from the record
22 or from material or communications related to the
23 proceeding, that this panel has reason to believe may
24 constitute a violation of the association's rules or the
25 federal security laws, the panel may initiate a referral



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1 of that matter to the association for disciplinary
2 investigation.

3 I don't expect this to occur, but I wanted
4 to make it clear that if something of this sort does
5 occur, we have that right and sometimes requirement.

6 If we make any such referral, it will only
7 be initiated after this dispute has been either settled
8 or otherwise disposed of or after a final award has been
9 rendered.

10 We have been selected to serve as neutral
11 arbitrators to hear and decide this matter. I want to
12 make it clear that we are not employees of FINRA Dispute
13 Resolution and have no direct affiliation with them
14 other than we have been appointed to serve as
15 independent arbitrators.

16 Pursuant to Canon 1 of the ABA AAA Code of
17 Ethics for commercial arbitrators, we, as neutral
18 arbitrators, have the duty of conducting these
19 proceedings with fairness and integrity. This duty
20 extends to all parties and to this process.

21 Therefore, on behalf of the panel, I
22 respectfully request that all parties and their counsel
23 or representatives refrain from engaging in any
24 conversation or contact with the members of this panel
25 except while in this room and in the presence of all



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1 parties, counsel or representatives; which, put another
2 way, may mean that we may not say hello to you in the
3 elevator. We may not even say good morning out in the
4 hallway in order to make it quite clear that we're not
5 talking to either side ex parte, is the legal term,
6 alone without the presence of the other side.

7 And we -- I will be submitting an oath to
8 any witness to ask if they swear or affirm that the
9 testimony they are about to give is the truth and
10 nothing but the truth and ask for them to state their
11 name, again, for the record.

12 Are there any matters that counsel or
13 Mr. Shaffer would like to bring up before we formally
14 begin the hearing, any logistic matters.

15 MR. KANE: Not on behalf of Wells Fargo.

16 MR. SHAFFER: I have two questions. One,
17 in my cover letter, I have requested that I do receive
18 an explanation of the decision in this matter and I
19 understand there's a fee for that. I haven't paid the
20 fee yet and I'm assuming there is a deadline for that.
21 But I'm assuming since the decision hasn't been rendered
22 yet, I can pay a fee and have the decision rationalized
23 or explained to me.

24 CHAIRMAN: Okay. There was something to
25 that effect in this script that I read.



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1 Mr. Kane, are you familiar with the timing
2 on that request?

3 MR. KANE: I was just looking for it in the
4 chart. Let me see here.

5 CHAIRMAN: Perhaps you, too, would like a
6 reason decision.

7 MR. KANE: Normally we do not. And I just
8 don't recall if the rule requires -- I think the rule
9 requires all parties to agree to an explanation. I need
10 to check on that. I think all the parties need to agree
11 to that. We do not agree. I need to check and make
12 sure that's the case. I don't want to say it without --

13 CHAIRMAN: Why don't we do this,
14 Mr. Shaffer, at a break, we'll look for it. Mr. Kane
15 has the rules in front of him, which I do not. We'll
16 get that answer back to you.

17 MR. SHAFFER: Second question, on the
18 discovery materials on the witness list were delivered
19 to my home address one day after the deadline. So I am
20 just wondering if that affects Mr. Kane's presentation
21 or the witnesses he has here, again, on December 23rd,
22 when the deadline was the 22nd.

23 MR. KANE: The rule is the deadline is when
24 filed. We mailed them on the 22nd by Fed Ex. So we are
25 in compliance with the rule.



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1 CHAIRMAN: If that is the case, you would
2 testify under oath that it was sent, mailed
3 December 22nd.

4 MR. KANE: I'll double-check to make sure.
5 But, yes, I would.

6 CHAIRMAN: All right. If that is the rule,
7 then it sounds like there has been compliance.

8 What we will do is run this arbitration
9 much like one would run a bench trial, which is another
10 way of saying that first the evidence would be for the
11 -- coming from the claimant, Wells Fargo Investment.

12 And by evidence, I mean the introduction of
13 any papers, documents. And number two, the testimony
14 from any of their witnesses.

15 You, Mr. Shaffer, of course, would have the
16 opportunity to cross-examination any witness who is
17 presented. And then after the claimants have presented
18 their case and they rest, then you have the opportunity
19 to present your case.

20 That would include any witnesses that you
21 have, any documents that you would like to submit which
22 have not already been submitted by Wells Fargo, and
23 they, of course, would have the opportunity to --
24 Mr. Kane would have the opportunity to cross-examine any
25 of your witnesses.



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1 Each side before we take testimony is
2 permitted an opening statement; that is a statement by
3 Mr. Kane and then followed by you as to what you expect
4 the testimony will show, what the evidence will be and
5 what it -- what it will amount to. After each side has
6 presented the evidence and their witnesses and each side
7 has rested, then each side has the opportunity of making
8 a closing statement. And at that time, we would ask
9 that Mr. Kane, representing the plaintiffs, set forth
10 the damages they seek and an itemization of that.

11 If neither side or either side chooses not
12 to make an opening statement, that's fine. There's no
13 demerits for that. It's how each of you choose to
14 present your case.

15 We would ask for a closing statement
16 because if not at that time already made clear the
17 damages being requested and from your standpoint, the
18 result that you request needs to be made clear to the
19 panel.

20 Logistically, we will begin, as we did
21 somewhat late this morning at 9:30. We have three days
22 set aside for this hearing. We, of course, don't know
23 whether or not all three days are necessary. It may be
24 that they're not.

25 And we will break sometime around the noon



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1 hour for a noon recess that will depend on when
2 witnesses are here, when it's convenient for all of us
3 to take a break. It's not going to be necessarily a set
4 time. We'll also take a break mid-morning and
5 mid-afternoon.

6 And we will finish the day somewhere around
7 5, depending, again, on where the witnesses are, who is
8 coming and when their testimony begins.

9 We'll try not to extend the witness's
10 testimony into the next day, but try and complete it.
11 And if that means going a little later, that's what it
12 means. We'll just work it out as is convenient for
13 everybody.

14 We want to make this preceding as
15 comfortable as we can, again, for everybody. So if
16 there are any logistic matters that come up during the
17 course, let us know and we'll deal with them.

18 Any other questions or needed explanations
19 that you can think of?

20 MR. KANE: Not on behalf of Wells Fargo.

21 (Thereupon, a break was taken.)

22 CHAIRMAN: We're back on the record. As I
23 said, each party may make an opening statement. It
24 should be limited to what the party intends to prove and
25 should not be a presentation of the evidence nor the



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1 merits of the case. In other words, it should not be an
2 argument. In other words, it will be, "The evidence
3 will show that this happened and that happened", and so
4 forth. But not an argument as to what you believe the
5 result should be. That would be more appropriate at the
6 time of your closing statement.

7 If there is no further questions, inquiries
8 or comments and no preliminary motions to be made, we
9 will proceed then with opening statements.

10 Mr. Kane?

11 MR. KANE: Thank you. I think as you had
12 the opportunity, or maybe you've already had an
13 opportunity to review the various documents, and I think
14 as you'll see from the evidence that's presented, the
15 facts of this case are really not particularly complex.

16 Wells Fargo is coming before this panel
17 today asking that you require Mr. Shaffer to do nothing
18 more than honor the written agreement that he signed
19 when he accepted a loan from Wells Fargo for \$111,347
20 for which he signed a promissory note that I think
21 you'll see the terms of which are clear and unambiguous.

22 Now, the evidence will establish that
23 Mr. Shaffer did join Wells Fargo on June 15th of 2006.
24 And that prior to joining the firm, as a result of
25 conversations that Mr. Shaffer had with the then



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1 regional sales manager of Wells Fargo, who at the time
2 was an individual by the name of John Scambray,
3 Mr. Shaffer was extended an offer of employment by Wells
4 Fargo.

5 And that offer of employment was embodied
6 in an offer letter that was submitted to Mr. Shaffer
7 before he joined the firm, which he accepted by signing
8 the letter and returning it to Wells Fargo, again, all
9 before he joined the firm.

10 Now, the offer letter that Mr. Shaffer
11 received from Wells Fargo before becoming employed there
12 outlines certain of the terms of his employment.

13 And among other things, that offer letter
14 states that for his first four months of employment with
15 Wells Fargo, Mr. Shaffer was to receive a nonrecoverable
16 draw, in essence, a salary for four months, I think it
17 was \$12,000 per month, or \$48,000.

18 In addition, pursuant to the terms of the
19 offer letter, it was agreed that if he joined the firm,
20 he would receive a minimum of a 40 percent payout on any
21 gross commissions he generated during his first year
22 with the firm, between June 15th of 2006 and
23 December 31st of 2007.

24 And the offer letter also indicated that
25 Mr. Shaffer would be eligible to receive a loan from



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1 Wells Fargo if his best 12 months of gross production
2 during his first 18 months of employment met or exceeded
3 \$217,500. If that occurred, if he hit that level, he
4 was eligible to receive a loan from the firm that was
5 equal to 50 percent of that gross production.

6 Now, the evidence will establish that Wells
7 Fargo complied with all of the terms of the offer letter
8 that it had agreed upon with Mr. Shaffer in advance of
9 his employment. Mr. Shaffer met the production level
10 referenced in the offer letter and in January of 2008,
11 he received the loan from Wells Fargo of \$111,347.

12 Now, the evidence will also establish that
13 in connection with this loan, Mr. Shaffer was required
14 to, and he did, in fact, sign a promissory note that
15 spelled out the terms and conditions of the loan.

16 The promissory note that Mr. Shaffer signed
17 specifically provides, among other things, that it was a
18 five-year loan; that it would accrue interest during
19 those five years; but that at the end of each month,
20 one-sixtieth of the principle and interest of that loan
21 would be forgiven. In other words, that's when the
22 taxable event occurred.

23 When Mr. Shaffer received the \$111,000, it
24 was a loan. So it wasn't income to him. However, the
25 income is incurred with the forgiveness. That's the



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1 taxable event. And he would be taxed on one-sixtieth of
2 that during the period of time that he was still
3 employed by the firm.

4 However, the promissory note that
5 Mr. Shaffer signed also specifically provides that if he
6 left Wells Fargo for any reason whatsoever, whether it
7 was voluntary or involuntary, if he left before the five
8 years was up, he was required to pay the entire unpaid
9 balance.

10 (Thereupon, a break was taken.)

11 CHAIRMAN: Okay. We're back on the record.
12 Mr. Kane, you were talking about repayment of the note.

13 MR. KANE: Yes. As I indicated, the
14 promissory note does provide that if Mr. Shaffer's
15 employment was terminated with Wells Fargo for any
16 reason whatsoever before the five years was up, that he
17 was required to immediately pay any unpaid balance and
18 the accrued interest on the promissory note.

19 Now the promissory note that Mr. Shaffer
20 signed also provides that if Wells Fargo had to bring an
21 action such as this to seek collection on this loan,
22 Mr. Shaffer agreed to reimburse Wells Fargo for all the
23 costs that it incurred in bringing an action such as
24 this, including its attorney's fees.

25 Now, as I mentioned, Mr. Shaffer joined



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1 Wells Fargo on June 15th of 2006. Unfortunately, the
2 evidence in this case is going to demonstrate that
3 Mr. Shaffer was discharged from Wells Fargo on
4 October 1st of 2009.

5 And in this regard, the evidence will
6 establish that Mr. Shaffer was discharged from Wells
7 Fargo for the very specific reasons that are set forth
8 on the Form U5 that Wells Fargo is required to file for
9 FINRA for any employee that leaves the firm, whether
10 voluntary or involuntarily.

11 In this regard, the U5 that was filed by
12 Wells Fargo relating to Mr. Shaffer says that he was
13 discharged for violation of company policies relating to
14 charging a customer commissions that were in excess of
15 the firm's commission schedule for equity securities and
16 for failing to report a written customer complaint.

17 And the evidence will establish that these
18 statements contained on the U5 accurately describe the
19 circumstances under which Mr. Shaffer was discharged by
20 Wells Fargo. They are accurate, they are truthful.

21 Subsequently, Wells Fargo requested that
22 Mr. Shaffer repay the unpaid balance on the loan, which
23 at the time was approximately \$75,000. He has not done
24 so. And this arbitration was filed.

25 And in this arbitration, Mr. Shaffer seeks



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1 to avoid repayment, his repayment obligations by
2 asserting various claims against Wells Fargo, which we
3 believe the evidence will establish -- I've had the
4 opportunity to hear that his claims are not only
5 factually incorrect, they're legally without merit and
6 in no way excuse him from honoring the obligation that
7 he undertook when he accepted the loan.

8 It's pretty clear, Mr. Shaffer signed the
9 promissory note. When he did, Wells Fargo lent him the
10 money. Mr. Shaffer agreed to repay any unpaid balances,
11 even if he was fired by Wells Fargo.

12 Unfortunately, he was. But he hasn't
13 repaid the outstanding balance on that loan. And so
14 factually and legally, the document requires that he
15 repay to Wells Fargo what he owes.

16 And as a result, at the conclusion of this
17 hearing, we will ask that you require Mr. Shaffer to
18 honor the written agreement that he signed, repay the
19 unpaid principle and the accrued interest on that loan
20 that now totals -- it's a little under I think \$78,000,
21 plus pay all of Wells Fargo's costs it has incurred in
22 bringing this action, including its attorney's fees,
23 because he agreed to do so under the promissory note.

24 And we will also ask that you dismiss all
25 of Mr. Shaffer's counterclaims with prejudice. Thank



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1 you very much.

2 CHAIRMAN: Thank you, Mr. Kane.

3 Mr. Shaffer, you may make an opening statement.

4 MR. SHAFFER: Thank you. Thanks for
5 providing a platform for these issues. I'm looking
6 forward to hearing an unbiased opinion for this.

7 Please allow me to give you an overview of
8 these events. I will provide details and answer any
9 questions at your request.

10 I believe Wells Fargo enticed me to join
11 Wells Fargo Investments with promises that they never
12 fulfilled and the benefits of receiving a performance
13 bonus over the first 18 months and \$15 million in client
14 accounts.

15 During and after periods of which I had
16 severe illness, during which time I was denied
17 disability benefits, which I was led to believe I was
18 qualified for, I was assigned a sales bonus, which I was
19 not subject to originally, and not informed that I would
20 be subject to at the time of hiring.

21 They were also unfair in that they excluded
22 50 percent of licensed banker referred accounts. I'll
23 explain this later of course. This situation,
24 favoritism and what I perceived as the firm's reckless
25 attitude towards client protection resulted in emotional



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1 distress and my request to be allowed to resign. I was
2 told the promissory note balance would be due in full if
3 I were to resign or be terminated. And I didn't have
4 the funds to do that.

5 During the tenure of my third sales
6 manager, after being told that I was going to be
7 assigned an additional branch the following month, and
8 that it was business as usual until then, I was abruptly
9 terminated for two minor infractions, infractions that
10 are routinely and ordinarily not cause for termination.

11 My U5 shows violation of company policy and
12 descriptions of these infractions, which is misleading
13 and has resulted in my repeatedly being refused
14 employment after very positive initial interviews. They
15 have effectively ended my 30-year career in the
16 brokerage business and left me with no means of similar
17 constructive employment.

18 Through the course of these events, I
19 believe that Wells Fargo Investments and their
20 representative violated state labor and employment laws
21 and are guilty of creating a situation of a detrimental
22 alliance, promissory estoppel and intentional and
23 negligent infliction of emotional distress.

24 I have a booklet that I have copies of for
25 each of you, and one for Mr. Kane, as well, which I'll



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1 be referring to with my exhibits.

2 It also has, especially so that I don't
3 repeat myself or ramble on or aren't effected by
4 nervousness, it has notes to what I'm saying. I'm
5 willing to take an oath that this is the absolute truth.
6 I have four copies altogether if I need to provide one
7 for Mr. Kane. But I have a copy for the panelists.

8 CHAIRMAN: What is contained in this
9 document?

10 MR. SHAFFER: My whole presentation and the
11 exhibits that I'd like to review, all contained in my
12 disclosure.

13 CHAIRMAN: The first thing that needs to be
14 done is to show that to Mr. Kane to permit him to go
15 through it to see, number one, whether he has, in fact,
16 received the documents before; and number two, if there
17 are any matters in this booklet, which I'll refer to as
18 a booklet, that he finds objectionable and would make an
19 objection.

20 MR. SHAFFER: What it is is my comments.

21 CHAIRMAN: Oh comments?

22 MR. SHAFFER: That's all it is.

23 CHAIRMAN: Is this, then, in the form of a
24 narrative presentation, "I did this, she did that", so
25 forth and so on?



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1 MR. SHAFFER: Yes.

2 CHAIRMAN: So would it be in lieu of your
3 testimony or would this be repetition of your testimony.

4 MR. SHAFFER: It's in addition to my
5 testimony. It's an aid to my testimony. And I figured
6 it would be good for the arbitrators to have a copy of
7 exactly what I said so they could look into it, along
8 with my witness list so they can verify anything that I
9 said.

10 CHAIRMAN: The first thing -- well,
11 Mr. Kane, what comments do you have?

12 MR. KANE: I'll be happy to look at it. To
13 the extent that they're documents that we exchanged, in
14 all likelihood, I won't have an objection of the things
15 that we exchanged. To the extent that it's a narrative
16 explanation of things, I think the best evidence would
17 be the testimony of the individual. But I'd have to
18 look at it.

19 CHAIRMAN: Right. And I think, Mr. Kane,
20 you would understand that that testimony may be in the
21 form, even though oral, may be in the form of a
22 narrative.

23 MR. KANE: Yes.

24 CHAIRMAN: Which, this being an arbitration
25 under the circumstances I think would be appropriate to



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1 receive.

2 MR. KANE: It may well be. I'd have to
3 look at it first. Likewise, what I have is a notebook
4 that has documents we exchanged. There's no narratives
5 in it. There are documents that we exchanged. I will
6 give it to Mr. Shaffer at the appropriate time.

7 CHAIRMAN: I would like you to do that at
8 the appropriate time so that we may have agreement on
9 the documents that will be presented in evidence. You
10 have an opportunity, of course, to object to any of the
11 documents that Mr. Kane wants to propose we take as
12 evidence. And we'll do that at the appropriate time.

13 Any further opening comments, Mr. Shaffer?

14 MR. SHAFFER: That's it.

15 CHAIRMAN: Okay. I think what we should
16 do, first, is to introduce Arbitrator's Exhibit Number
17 1, which consists of the following: It is, first of
18 all, a certificate of out-of-state attorney, and I'm not
19 sure why I sound so hoarse, but bear with me, if you
20 will, which may or may not be appropriate as part of
21 Exhibit 1. But there it is.

22 The submission and agreement signed by the
23 claimant on behalf of the claimant, the statement of
24 claim and arbitration, a letter from Mr. Shaffer which
25 was sent by him to FINRA, and I should add several



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1 letters which I believe have been submitted to Wells
2 Fargo, and then Wells Fargo Investments' response to
3 Mr. Shaffer's claims or counterclaims that were part of
4 or included in the letters and exhibits that Mr. Shaffer
5 submitted to FINRA.

6 And Ms. McClaskey is going to be receiving
7 the exhibits as produced by the parties with the first
8 Exhibit Number 1.

9 How do you want to go about presenting your
10 further exhibits? Will they be presented in connection
11 with the testimony of a witness?

12 MR. KANE: Yes.

13 CHAIRMAN: I assume the same thing for you,
14 Mr. Shaffer, when it's your turn to testify, you would
15 be submitting your testimony orally and copies of the
16 exhibits? And the panel will discuss whether or not to
17 receive your written testimony in addition to receiving
18 your oral testimony.

19 Typically, testimony is given orally and
20 not repeated in writing except to the extent that they
21 are documents, of course, to which you refer.

22 MR. SHAFFER: Documents either from the law
23 firm's discovery package to me or documents that I
24 declared to them earlier?

25 CHAIRMAN: Right. Okay. Shall we proceed



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1 then with the first witness? Okay. Mr. Kane?

2 MR. KANE: And my first witness will be
3 Mr. Shaffer.

4 CHAIRMAN: Okay. Counsel has the right to
5 examine you or the other party as part of his
6 presentation of witnesses if he calls you. So I'm going
7 to swear you in.

8 (The witness was sworn in.)

9 MR. KANE: If I might, I'll pass out the
10 book. What I'll be doing is I'll be going through the
11 documents and asking Mr. Shaffer to identify them and
12 then seeking to introduce them at that time.

13 CHAIRMAN: Very good. Yes.

14 For the record, Mr. Kane is obtaining
15 copies of documents which he plans to introduce and he's
16 going to be giving Mr. Shaffer a copy, as well as
17 members of the panel.

18 KEN SHAFFER,
19 called as a witness on behalf of the Plaintiff, being
20 first duly sworn, was examined and testified as follows:

21 EXAMINATION

22 QUESTIONS BY MR. KANE:

23 Q. As I indicated, my name is Ronnie Kane and
24 I'm here representing Wells Fargo. Prior to today, you
25 and I have never met; correct?



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1 A. Correct.

2 Q. Prior to today, you and I have never spoken
3 to one another?

4 A. No.

5 Q. Could you just tell the panel your current
6 residential address, please?

7 A. 1515 Garlinda Drive, El Dorado Hills,
8 California. That home is currently for sale. My
9 address may be changing in the near future.

10 Q. I just want to briefly go through your
11 employment background. And rather than guess at dates,
12 if you would please, would you just go to the Tab 1,
13 Complainant's Exhibit 1 which -- in the white notebook.

14 And if you would, Mr. Shaffer, go to the
15 page in the lower-right-hand corner. There will be some
16 Bates stamp numbers. If you would go to the Bates stamp
17 numbers 139, 140 and 141, are those your signatures on
18 the document?

19 A. Yeah. 139 and 141, not 140.

20 Q. Okay. I'm sorry. Yeah, William Cannon is
21 the signatory on behalf of Wells Fargo. But on 139
22 where it says "Ken Shaffer", that's yours, and 141,
23 where it says "Ken Shaffer", that's your signature as
24 well?

25 A. Uh-huh.



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1 Q. You have to answer verbally. You can't say
2 "uh-huh".

3 A. Yes.

4 Q. Everybody does it. But the uh-huh's don't
5 get picked up sometimes.

6 If you go to page 143, that starts out with
7 the employment background -- let me know when you get
8 there, Mr. Shaffer.

9 A. I see that.

10 Q. Was August of 1981 with Payne Weber the
11 first time you became employed in the securities
12 industry?

13 A. No. It was the --

14 Q. Where were you employed -- prior to 1981,
15 what firms had you been employed with?

16 A. I joined the firm of Drexel, Burnham,
17 Lambert in 1979 when I was 24 years old, going on 25.

18 Q. How long were you with Drexel Burnham?

19 A. It says 1982, so I'd say two years.

20 Q. And you were with Payne Weber from August
21 of '81 to November of '82?

22 A. Uh-huh.

23 Q. Yes?

24 A. Right.

25 Q. And for what reason did you leave Payne



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1 Weber at that time, if you recall?

2 A. Truthfully?

3 Q. If you recall.

4 A. Well, this is a little embarrassing. I
5 befriended a secretary -- excuse me -- and I'm going to
6 talk a little bit about respiratory problems that I've
7 been experiencing. Sometimes I'm going to have to
8 excuse myself and hopefully -- I hope every day that I
9 don't have this every day. I'm not going to fake a
10 cough and not going to embarrass the panelists or anyone
11 else.

12 At Payne Weber, I befriended a secretary in
13 the San Francisco office and we began dating. We became
14 engaged. We later called off our engagement. And
15 several days later the manager at the Payne Weber office
16 told me I was terminated. Kind of funny when I look
17 back at it. At the time, it didn't seem funny at all.

18 Q. And then you joined --

19 A. And not for any client complaint, not for
20 any client interaction. He said he asked me for a
21 report of a client of mine who purchased some options
22 and I hadn't given them to him, so he wanted me out of
23 there.

24 Q. And you joined Prudential, at the time it
25 was Prudential?



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1 A. Prudential Securities. And stayed there
2 for eight years with a great review.

3 Q. What type of business did you have by the
4 time you left Prudential? Was it a typical retail
5 securities business?

6 A. It was a general retail securities
7 business. And as you can see by my U4 records, I had no
8 client complaints, no issues, no problems.

9 I resigned from Prudential to move out of
10 the area and take a position with Bank of America
11 through a contact I had who was with the Prudential base
12 who joined the Bank of America program and called me
13 about the opportunity.

14 Q. If you go to the page prior, it has a Bates
15 stamp in the lower-right-hand corner of 143. Before you
16 went to Bank of America, did you have some interim
17 positions that are indicated here? This one indicates
18 October '90 to June of '91 with Associated Planners?

19 A. Yes.

20 Q. And what was Associated Planners?

21 A. Associated Planners is a platform for
22 independent brokers. For the record, I don't see how
23 something that happened 20-some-odd years ago matters.

24 Q. Well, I'm just getting your background.
25 And then you went to Olvie (phonetic)



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1 Discount Corporation?

2 A. Correct.

3 Q. And why did you leave them in December of
4 '92?

5 A. Actually, that -- I left Olvie to join the
6 Bank of America company.

7 Q. And then you went from Bank of America to
8 Morgan Stanley Dean Witter in July of '99?

9 A. Right. After what is it, eight years in
10 Bank of America, I joined the ex Bank of America reps at
11 Morgan Stanley shortly after the manager that I worked
12 with at Bank of America was terminated himself.

13 Q. Did you receive any inducements to join
14 Morgan Stanley?

15 A. I believe so.

16 Q. Did you receive a loan, upfront loan to
17 join Morgan Stanley?

18 A. Yes, I did.

19 Q. And you had to sign a promissory note for
20 that?

21 A. Yes, I did.

22 Q. And how much was that loan for?

23 A. I'm not sure of the exact amount.

24 Q. Approximately?

25 A. Approximately \$180,000.



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1 Q. And then you left Morgan Stanley in March
2 of '03 and joined H & R Block Financial Advisers;
3 correct?

4 A. Yes, I did.

5 Q. And did you receive any inducement to join
6 H & R Block Financial Advisers?

7 A. I believe I did, yes.

8 Q. You also received an upfront loan from
9 them?

10 A. No. There was no loans.

11 Q. What kind of inducement?

12 A. I received a salary over the first 12
13 months, and a bonus based on asset accumulation after
14 one year, I believe.

15 And the questions about whether I signed
16 some kind of a promissory note with H & R Block, I was
17 never asked to.

18 Q. Okay. And then it was -- at the time you
19 left H & R Block Financial Advisers, what kind of --
20 what type of business were you doing at H & R Block
21 Financial Advisers?

22 A. Still general investment advising and
23 financial planning.

24 Q. And at the time you left them in June of
25 '06, do you recall approximately the assets under



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1 management that you had, ballpark?

2 A. Yes, I do. Because I talked to John
3 Scambray about that and about my concern with that.
4 That's the reason I had come to Wells Fargo and inquired
5 about the position that was available. I had about
6 \$15 million in assets, which as everyone knows who
7 appears in the brokerage business, is not a lot.

8 Q. And your trailing 12 months of gross
9 commissions at H & R Block, was that around \$217,500?

10 A. Yeah, probably.

11 Q. Just approximately?

12 A. Approximately, yeah.

13 Q. And you -- as indicated on your U4, the
14 first page of your U4, Mr. Shaffer --

15 A. The very first page.

16 Q. Yeah, the very first page. June 15th of
17 2006, as indicated under your name, June 15th, 2006 was
18 your first date of your employment at Wells Fargo?

19 A. Correct.

20 Q. And prior to joining Wells Fargo, you had
21 received an offer letter from the firm, had you not?

22 A. I believe so.

23 Q. And if you would, please, take a look at
24 Claimant's Exhibit 2, the Tab 2. Why don't you look at
25 all the pages, and then when you're done, let me know



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1 and then I'll ask you a question.

2 A. Okay.

3 Q. And is that your signature on the very last
4 page that has the stamp number W97?

5 A. Yes, it is.

6 Q. And the page prior to that that has the
7 W96, do you recognize that as being Mr. Scambray's
8 signature?

9 A. I wouldn't recognize Mr. Scambray's
10 signature. But yeah, I see he is --

11 Q. And at the time, he was regional sales
12 manager in the area for Wells Fargo?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes, he was.

16 Q. If you go all the way back to the first
17 page, when you received and accepted this, you
18 understood, did you not, that Wells Fargo was agreeing
19 to pay you this \$12,000 nonrecoverable draw, I think
20 that's from June of '06 to October of '06, four months;
21 correct?

22 A. Uh-huh.

23 Q. Yes?

24 A. Yes.

25 Q. And you also, going to the transition



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1 compensation payout portion, you understood that they
2 also agreed to pay you the 40 percent minimum retail
3 payout through December 31st of '06, correct; as well?

4 A. Yes.

5 Q. And then after that, you would go to a
6 normal compensation grid; correct?

7 A. Correct.

8 Q. And then if you go to the second page, I'm
9 going to go to the additional incentive portions. You
10 understood then when you accepted this that if your best
11 contiguous rolling 12 months of gross commissions during
12 your first 18 months of employment through December of
13 '07 met or exceeded 217,500, that you were eligible for
14 the taxable loan in the amount of 50 percent of your
15 gross commission. You understood that; correct?

16 A. Correct.

17 Q. And you understood that the loan would be
18 secured by a five-year promissory note calling for the
19 loan to be forgiven and taxed in equal monthly
20 installments over a five-year period. You understood
21 that when you accepted the offer?

22 A. I understood that it was the criteria for
23 the agreement. In all actuality, all brokers think of
24 these types of promissory notes as a bonus.

25 Q. It doesn't refer to it as a bonus, does it?



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1 A. No, it does not. But later I will show
2 that contract law considers it a bonus.

3 Q. And it says here the loan would be secured
4 by a five-year promissory note calling for the loan to
5 be forgiven over the five-year period; correct?

6 A. That's what it says.

7 Q. That's what it said when you signed it;
8 correct?

9 A. Uh-huh.

10 Q. Yes?

11 A. Yes.

12 Q. And it also said that if for any reason
13 your employment with the firm terminates before the end
14 of the term of the loan, it would be your responsibility
15 to repay the outstanding amount due under the promissory
16 note. You understood that as well, did you not?

17 A. Standard boilerplate.

18 Q. That's what it says and what you're
19 signing; correct?

20 A. That's what it says, right.

21 Q. And if you would go, please, to the page
22 that has the Bates stamp in the lower-right-hand corner
23 W96, and I'm going to direct your attention to the
24 second paragraph where it states -- and I'll ask you:
25 Did you understand that, as stated here, your employment



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1 at Wells Fargo had no specified term or length? Both
2 you and Wells Fargo had the right to terminate your
3 employment at any time with or without advance notice
4 and with or without cause. You understood that when you
5 signed this document, did you not?

6 A. I understood that's what they were telling
7 me.

8 Q. Okay. Is there anything about that
9 language you don't understand?

10 A. Well, yeah. In hindsight, because I didn't
11 have the right to terminate our agreement after I signed
12 the promissory note without a significant penalty.
13 So --

14 Q. Well, you had a right to terminate. But
15 the consequence was you had to pay the outstanding
16 balance on the loan?

17 A. Right.

18 Q. And then if you'll go to the fourth full
19 paragraph over the second sentence that starts, "No
20 guarantees or promises of any kind, other than those
21 contained herein, have been made concerning leads,
22 referrals, book of business, clients, store or other
23 assignments, commissions, annual compensation or any
24 other terms of your employment."

25 You understood that when you signed this



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1 document, did you not?

2 A. I understand that's in the document. I
3 also assumed that Mr. Scambray's promise of giving me
4 \$15 million in assets was in addition to that and not
5 covered by the agreement.

6 Q. Well, does it go on to say, "Except as
7 explicitly set forth above, no employee of Wells Fargo
8 is authorized to change or modify the terms of this
9 letter except in writing and signed by an executive
10 vice-president"?

11 A. I see that.

12 Q. Well, is there anything about this
13 language, that "no guarantee or promises" that you don't
14 understand?

15 A. No. This document specifies that.

16 Q. And going to the next page where you signed
17 it, you said, "By signing and returning a copy of this
18 letter, I accept and agree to all of the terms and
19 conditions of this offer of employment." And that's
20 what you did, did you not?

21 A. That's my signature. That's what I did.

22 Q. And if you would, Mr. Shaffer, please, go
23 to the next tab, Claimant's Exhibit 3. And I don't want
24 to mislead you, so I'm going to tell you that the only
25 difference -- other than the handwriting here, the only



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1 differences I noticed, if you go to the last page, you
2 signed it on another copy of the offer letter on
3 June 9th of '06. But why don't you take a moment to
4 look at it and I'll ask you a question when you're done.
5 The prior one had your signature dated June 7th and this
6 is just one date. Other than that, my looking at it,
7 the terms are identical?

8 A. Uh-huh.

9 Q. Do you have a recollection as to how it
10 came to be that you signed a second one? Did you
11 misplace the first one, if you have a recollection? And
12 if you don't, that's fine.

13 A. I have no real recollection. My
14 recollection is that John told me that I had -- that I
15 needed to sign this document, that I needed to stop by
16 and sign it.

17 Q. And that is your signature on the last page
18 of Claimant's Exhibit 3?

19 A. It is.

20 Q. Okay. And if you would, please, take a
21 look at Tab 4, Claimant's Exhibit 4. Take a look at all
22 the pages. And when you've finished looking at it, I'll
23 ask you a question.

24 A. Yes.

25 Q. Is that your signature that appears on the



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1 last page of this document?

2 A. It is.

3 Q. Dated June 9th of 2006?

4 A. Right.

5 Q. And if you would go to the page prior to
6 that, in the column, or the paragraph, rather,
7 "Employment At-Will", when you signed this, you
8 understood as indicated there that your employment is
9 at-will and nothing in the document changed or altered
10 that status; and that you were free to resign at any
11 time for any reason. And, similarly, the firm was free
12 to end the relationship at any time for any reason.

13 You understood that, did you not, when you
14 signed this?

15 A. That's what it says. There's an assumption
16 of just cause in any employer, employee relationship.

17 Q. Well, what is there about the language that
18 says, "Similarly, the firm is free to end the employment
19 relationship at any time for any reason with or without
20 cause", is there anything about that language that you
21 don't understand?

22 A. No. I don't -- you rationally expect that
23 a firm would be fair and not terminate you without
24 cause.

25 Q. And if you would, please, you did -- in



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1 fact, the offer letter that indicated that you were
2 eligible to receive that loan, you did, in fact, receive
3 that loan, did you not?

4 A. Yes, I did.

5 Q. And if you would, please, go to Tab 5,
6 Claimant's Exhibit --

7 A. Can I clarify? I received the amount in
8 question. I never really thought of it as a loan. I
9 thought it was just a reason I would have to stay with
10 the firm for five years.

11 Q. Well, let's look at Exhibit 5, if you
12 would, please. Take a look at all the pages and after
13 you've finished looking at it, let me know and I'll ask
14 you a question.

15 A. I've seen this before.

16 Q. And if you'd take a look at the last page,
17 is that your signature on the last page of Claimant's
18 Exhibit 5?

19 A. Yes, it is.

20 Q. And if you'd just go to the very first
21 page, it says "in consideration of a loan". Is there
22 anything about that language you don't understand?

23 A. No. I understand the language might be --
24 but you must also understand that in the brokerage
25 community, these types of arrangements are considered



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1 bonuses. And this was a bonus I earned based on my
2 achieving the production standards that were set out for
3 me. Yeah, I see it says "consideration of loan".

4 Q. Well, and the offer letter that you signed
5 referred to it as a loan for which you would have to
6 sign a promissory note as well, did it not?

7 A. Uh-huh.

8 Q. Yes?

9 A. Yes.

10 Q. Nowhere in the offer letter or in this
11 promissory note does it refer to it as a bonus, does it?

12 A. No.

13 Q. And, in fact, when you received the loan,
14 you didn't report income of \$111,347, did you?

15 A. No, I did not. But part of what I will be
16 discussing is that Wells Fargo gave me documents that
17 listed this amount as income, not a loan.

18 Q. The income -- I'll go through the document
19 in a minute. But when you received the \$111,347 in
20 2008 -- that's when you received it; correct?

21 A. Uh-huh.

22 Q. Yes?

23 A. Right.

24 Q. You didn't report as income on your tax
25 return \$111,347, did you?



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1 A. No, I did not.

2 Q. Because it was a loan. If it was a bonus,
3 you would have reported the \$111,347 as income?

4 A. I considered it a bonus, and most brokers
5 consider it a bonus that they don't have to pay tax on.
6 That is one of the ways that it is described to you in
7 interviews, this is money that you receive that you do
8 not have to pay tax on upfront.

9 Q. Okay. And you also understood, did you
10 not, that you were going to be charged interest on this
11 loan as indicated here of 3.58 percent; correct?

12 A. If I didn't stay with the firm for a
13 five-year period, which I very much intended on doing.

14 Q. Well, this says it's going to accrue on any
15 unpaid balances of 3.58 percent. Do you see that?

16 A. And that would be forgiven.

17 Q. Understood. I'll go there. In the third
18 paragraph, Item 1, you understood, did you not, that the
19 entire balance under the note would be immediately due
20 and payable if your employment with Wells Fargo was
21 terminated for any reason whatsoever, including, but not
22 limited to, involuntary termination.

23 You understood that when you signed this
24 promissory note; correct?

25 A. I understand that that was in the wording



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1 of the promissory note. I didn't think that any company
2 that held a public trust would, in fact, terminate
3 someone for any reason whatsoever, including reasons
4 that weren't rational.

5 Q. If you would, please, go to the last
6 paragraph of this last page. You understood when you
7 signed this promissory note that the principle and
8 interest due on this note would be forgiven and taxed in
9 sixty equal monthly increments commencing on the first
10 day of the month following dispersement of the loan
11 proceeds continuing thereafter. You understood that;
12 correct?

13 A. Yes. That's what it says.

14 Q. And that's the tax that you were -- and
15 when that was forgiven, you were taxed on the forgiven
16 amount?

17 A. Right.

18 Q. Okay. And then if you would, please, go to
19 the second page of this promissory note. I'm going to
20 go to the third full paragraph. When you signed this
21 promissory note, you understood, did you not, that in
22 the event that any action or lawsuit was required to be
23 brought for the collection of the note, you agreed to
24 pay reasonable attorney's fees and costs, including all
25 fees and costs involved in the collection.



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1 You understood that when you signed this
2 promissory note; correct?

3 A. Yes.

4 Q. Okay. And you also indicate -- you also
5 understood in the -- it's the fifth paragraph down, that
6 you executed the note without reliance on any oral
7 representations. You understood that when you signed
8 this note, did you not?

9 A. I'd have known that. But, obviously, I did
10 rely on all representations. But I'm not seeing that.
11 That's in the fifth paragraph on the second page.

12 Q. Yes. "The undersigned executes this note
13 without reliance on any oral representations."

14 A. Yeah.

15 Q. And the paragraph below that, you
16 understood, did you not, that, again, you were employed
17 on an at-will basis, and that didn't constitute an
18 agreement to employ you for any specified period of
19 time, and your employment could be terminated at any
20 time with or without notice or cause?

21 A. That's what it says.

22 CHAIRMAN: Would this be a good time to
23 take a morning break?

24 MR. KANE: It would be.

25 CHAIRMAN: So let's resume in ten minutes.



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1 UNIDENTIFIED SPEAKER: Off the record.

2 (Thereupon, a break was taken.)

3 CHAIRMAN: We are on the record. You may
4 proceed, Mr. Kane.

5 MR. KANE: Thank you.

6 BY MR. KANE:

7 Q. If you would, please, Mr. Shaffer, take a
8 look at Exhibit 6, Claimant's Exhibit 6 in the notebook.
9 Take a look at it and let me know when you're finished
10 with it and I'll ask my question.

11 A. I've seen this. Mr. Chumney probably
12 mailed this to me several times.

13 Q. And you -- do you recall receiving this
14 while you were at Wells Fargo, as well, that would show
15 how the one-sixtieth would be taxed and paid, you know,
16 forgiven over time?

17 A. I don't have a recollection of receiving
18 this from Wells Fargo. But I certainly believe that I
19 did.

20 Q. Okay. I understand. And, likewise, you
21 did, in fact, if you take a look at exhibit --
22 Claimant's Exhibit 7, receive the loan proceeds of
23 \$111,347. Do you see that?

24 A. Yes, I did. And this document, if you'll
25 notice, lists this amount as a net pay distribution.



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1 And the top part of this particular document is listed
2 as a biweekly payroll report, I would assume. And it
3 lists the current total gross at the bottom, \$111,347
4 and net pay of \$111,347, which is one of the confusing
5 issues here, and I think pertinent to whether this is,
6 in fact, a loan or not.

7 Q. Well, you did get --

8 A. It's certainly confusing.

9 Q. And you see the net pay distribution of
10 \$111,347 there, do you not?

11 A. Paid, yes.

12 Q. And there was no taxes taken out of that.
13 The only taxes would relate to the regular pay that was
14 the draw, \$138,667. And anything under the incentive
15 plan. Do you see that?

16 A. I see that. And at the top in the middle
17 box down, it says "pay rate \$36,053 annual". That may
18 be the recoverable draw and is not correctly referred to
19 as a salary.

20 Q. All right. And if you would, please, as it
21 relates to your employment with Wells Fargo, you, in
22 fact, were discharged from the firm on October 1st of
23 2009, were you not?

24 A. Yes, I was.

25 Q. And if you would, please, take a look at



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1 Exhibit 8, Claimant's Exhibit 8. Read all of it. And
2 then when you're finished, I'll ask you a question.

3 A. I've seen this many times, too. Yes, I'm
4 ready.

5 Q. And you received a copy of this letter from
6 Wells Fargo shortly after the October 16th date on the
7 letter?

8 A. After I called Ms. D'Orio and told her that
9 I did not understand why I was terminated. Yeah, I did
10 receive this shortly after.

11 Q. And that was sometime in October of 2009?

12 A. Right.

13 Q. And if you would go to the page that has
14 121 at the bottom, it indicates there under IM 3, "book
15 termination". Let me know when you get to that portion
16 of the document.

17 UNIDENTIFIED SPEAKER: Would you restate
18 where you're looking?

19 MR. KANE: Sure. It's the page that's
20 Bates stamped 121, and it has the 3, and it says
21 "termination".

22 A. I see that.

23 BY MR. KANE:

24 Q. And you see your reason for termination,
25 discharged. Do you see that?



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1 A. Right. At the very bottom.

2 Q. Okay. And then if you go to the next page
3 where it asks for explanation, and it says, "violation
4 of company policies, representative lacked justification
5 for charging equity securities markup that exceeded the
6 firm's full-service equity schedule. And representative
7 received a written customer complaint and did not
8 forward to supervisory principal."

9 That's what was reflected on the U5 that
10 Wells Fargo submitted to FINRA?

11 A. I see that. Its erroneous and deceiving.

12 Q. Well, let's take a look if you would,
13 please, as it relates to Item 1, the charging the
14 commissions that exceeded the full service equity
15 schedule, that relates to two trades that you were
16 questioned about by Ms. Mortensen; isn't that correct?

17 A. Right.

18 Q. And if you would go to Tab 10, and I'd like
19 you to take a look at the second page that has the Bates
20 Stamp Number W20, did you -- actually, it would start on
21 the page W19 at the bottom. It's the string e-mail.

22 It says -- e-mail from Ms. Mortensen to you
23 dated December 29, 2009 at 3:08. Did you receive a copy
24 of this e-mail from Ms. Mortensen at that time?

25 A. Yeah. I got the e-mail requesting



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1 clarification of the trade.

2 Q. Okay. And as it relates -- so when you
3 received this e-mail that's on page 20, did you
4 understand what this was referring to, this e-mail where
5 she says --

6 A. The actual e-mail didn't have this excerpt
7 of the trades. But I -- we had already talked about it.
8 I knew what the trades were and which account it was,
9 yeah.

10 Q. It says, "Please advise why you entered a
11 flat dollar commission in excess of what the normal comp
12 would be." And then it has in this box the two trades.

13 Is it your testimony that this wasn't
14 contained in the e-mail that you received from her?

15 A. It might have been. I don't -- I don't
16 think the e-mail system is capable of printing something
17 like this, is it? But, yeah, and it may have been. And
18 it doesn't matter. Because I understood what trades we
19 were discussing, whose account it was and so forth.

20 Q. And just so it's clear, did you
21 understand -- let's take this first trade on
22 September 29th. It was a purchase you solicited of this
23 closed-end fund where you charged the client a flat
24 commission of \$495 versus what the firm's equity
25 commission schedule indicated should have been charged



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1 of \$368.69. You understood that?

2 A. Right. A difference of \$120.

3 Q. But you understood that that's what this
4 was referring to?

5 A. I understood.

6 Q. And as it relates to the second trade, this
7 was a solicited purchase by you of a closed-end fund,
8 where, again, you charged the client a flat commission
9 of \$495, versus what the firm's commission schedule
10 reflected should have been charged, and that is the
11 \$336.58; is that correct?

12 A. Uh-huh. A difference of \$175.

13 Q. But you understood that that's what this is
14 referring to?

15 A. Right.

16 Q. And you responded to Ms. Mortensen, did you
17 not?

18 A. I did.

19 Q. And before we get to that, you understood
20 that she was the branch administrative manager at the
21 time when you received this from her; correct?

22 A. I did. And the reason that my e-mail is as
23 informal as it is and as casual as it is is because --
24 and, certainly, we can ask Ms. Mortensen to comment on
25 this. But prior to this time, Mary Mortensen and I had



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1 had a very friendly relationship. And there was no
2 instances of client complaints or policy violations on
3 my part that we had to discuss. We had a very friendly
4 relationship.

5 And, in fact, part of the reason I
6 responded this way in this e-mail is that Ms. Mortensen
7 would, in our conversations, would refer to me as honey,
8 sweetie, other endearing terms. I'm not saying that she
9 had a romantic interest in me personally. I assume
10 that's the way she talks to all the brokers.

11 But she would refer to me with endearing
12 terms that made me think we were on a very friendly type
13 level as far as our relationship goes.

14 Q. She told you, did she not, that these
15 trades had been flagged as part of her routine functions
16 that -- indicating that you had charged a client in
17 excess of what the firm's commission schedule indicated
18 should be charged a client. She indicated that?

19 A. She indicated that.

20 Q. Okay.

21 A. This was an accidental situation on my
22 part.

23 Q. Okay. Well, let's go to your response, if
24 you would, please. And that's on page 19 where you say,
25 "Was I not supposed to do that? We can change if we



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1 want. These are good clients, recently 50 percent,
2 72 percent profit on trades. I estimated the cost at
3 \$1,000. I thought gouging was part of our business
4 plan."

5 So is it your testimony that because of
6 these terms of endearment, you thought it would be
7 appropriate for you to tell her that you thought gouging
8 a client was part of the business plan? You thought
9 that was an appropriate --

10 A. I --

11 Q. -- comment to make?

12 A. I felt that in a period of extreme
13 frustration, that I would make that statement to, again,
14 display my displeasure at the firm's attitude of
15 generating commissions without a consideration of the
16 benefit to the client.

17 Q. Just so we're clear, you're on Tab 10, the
18 page 19 e-mail in the middle, Ken Shaffer, sent
19 September 29, 3:27, to Ms. Mortensen regarding review of
20 excess commissions; correct?

21 A. Uh-huh.

22 Q. Yes.

23 A. And I had a reason for saying that. And I
24 will address that in my presentation.

25 Q. Now, you understood that part of her role



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1 was a compliance role at the firm, Ms. Mortensen's role;
2 correct?

3 A. Correct. I understood that was her role.
4 But the compliance department at Wells Fargo did not
5 fulfill the duties of a compliance department.

6 Q. Okay. Let's, if you would, please, go to
7 the page that has the Bates stamped number in the
8 lower-right-hand corner.

9 A. You don't want to talk about the rest of
10 the e-mail?

11 Q. I'm going to ask you some questions, if you
12 would please go to the page that has --

13 CHAIRMAN: I'm sorry. What did you say,
14 Mr. Shaffer?

15 MR. SHAFFER: I said did he want to review
16 the rest of the e-mail. He brought up some portions of
17 the e-mail and that's it.

18 CHAIRMAN: And you're referring to the
19 e-mail on page 19?

20 MR. SHAFFER: Right. Where I complained
21 about the monthly minimums with the threat of
22 termination if not met.

23 CHAIRMAN: All right. You can bring that
24 up during the course of your presentation.

25 MR. SHAFFER: Thank you.



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1 CHAIRMAN: Go ahead, Mr. Kane.

2 BY MR. KANE:

3 Q. If you would, Mr. Shaffer, go to page W22.
4 That's the order ticket for the purchase for the
5 customer; right?

6 A. Yeah, the same two.

7 Q. Let's skip to 22, and let me know when
8 you're there because I'm going to ask you a question
9 about that.

10 A. Okay. I'm looking at it.

11 Q. And where you see it says "CM \$495".
12 That's something that you had to enter into the system,
13 was it not?

14 A. Right.

15 Q. And you had -- you intentionally entered
16 the \$495 into the system?

17 A. I did that. And financial advisers were
18 allowed to adjust commissions. It's an industry
19 standard that commissions may be adjusted based on the
20 time spent with the client. And, truthfully, if brokers
21 would respond truthfully, commissions are also adjusted
22 based on the success of the trade. If you make \$10,000
23 on the trade, the commission might be \$385. And if
24 you're losing money on the trade, it might be \$39.95.
25 And brokers adjust trade amounts. You're allowed to do



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1 that within the trade entry system that we were using.

2 I don't understand why it didn't inform me
3 that the principle amount I was working with didn't
4 support that level of commission charged.

5 Q. Take a look at page -- well, first of all,
6 when you put a trade in, when you enter a trade, you
7 don't know whether the trade is going to be profitable
8 or unprofitable; right?

9 A. No.

10 Q. So how could you base a commission on
11 profitability that you don't even know if it exists yet?

12 A. That's why if you go out to my e-mail to
13 Mary, again, assuming that we were on the same friendly
14 basis we were always on, that these clients returned a
15 50 and 72 percent profit on trades. And that was the
16 reason I adjusted the commission upward; which, again,
17 is allowed of financial advisors.

18 We also talk about discount and premium
19 business. It depends on the amount of time you spend
20 with the clients and what kind of services you offer.
21 Also, when you're placing a bond trade, you put the
22 commission in that you think is appropriate.

23 On the bond trading platform, if you put a
24 commission in that's higher than the allowed amount,
25 then it tells you the commission is too high. And I



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1 would assume it would have done that on the equity side,
2 too.

3 Q. Okay. Take a look at --

4 A. Again, so I overcharged the commission
5 accidentally by \$300 on two trades.

6 Q. Well, not accidentally. You overrode the
7 system and put in \$495 versus the \$169.47 it should have
8 been; correct?

9 A. Yes.

10 Q. That was no accident?

11 A. No. I put the amount in, having no idea
12 that it would be over the maximum amount.

13 Q. Well, take a look at Exhibit W -- at page
14 W23 in Exhibit 10. You understand -- this would be
15 something that you would see on the screen when you
16 would enter a trade that would calculate the commission
17 that should be charged to the client. And as we see
18 here, it should have been \$169.47.

19 That's something that you would see on the
20 screen when you entered the trade; correct?

21 A. No. No. And you can check with Mary on
22 this. You could go to the commission calculator screen,
23 I believe, and calculate a commission. But when you
24 were placing a trade, this screen does not come up.

25 And, again, I had no idea that the amount



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1 of commission was not supported by the principle amount
2 of the trade.

3 Q. Isn't this the commission calculator?

4 A. This may be the commission calculator.
5 It's not the order entry screen. I never saw this. By
6 the way, it says "maximum commission of 460" here.

7 Q. At the time you entered this order, did you
8 know that you were charging commissions that were in
9 excess of what the schedule called for?

10 A. Absolutely not.

11 Q. So you didn't see the commission calculator
12 that says it should have been \$169.47?

13 A. I didn't go to the commission calculator
14 screen. Mary would know how that works. I know there
15 is a commission calculator screen. I didn't go to that.
16 I went to the order entry screen, entered the trades for
17 the client, assuming that I was doing the best job I
18 could for them, and I had no idea that I was
19 overcharging the client.

20 This is interesting, too, because in this
21 Number 23, it shows the maximum commission of \$460. I
22 thought we said the actual commission was less than
23 that.

24 Q. You saw the actual commission charge to be
25 \$169.47?



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1 A. Yeah. Why does it say up in the shaded
2 area, it says "max commission 460".

3 Q. Okay.

4 A. Why does it say that? I don't know.

5 Q. Would you go to page 25?

6 A. Okay.

7 Q. This is the second trade that we were
8 talking about; correct?

9 A. Right.

10 Q. And, again, you entered the \$495 into the
11 system?

12 A. I did.

13 Q. Had you not entered that into the system,
14 it would have -- the commission would have been
15 calculated according to the commission calculator;
16 right?

17 A. Right, which is what I did probably
18 90 percent of the time. Another 90 percent of the time,
19 I reduced the commission to a lower amount which was
20 necessary based on relationships that I had. And in
21 this instance, and I would suggest one percent of the
22 time, I adjusted the commission upward.

23 Q. And so you overrode the system in order to
24 adjust the system upward?

25 A. It's not a matter of overriding the system.



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1 You just put the commission in. I did that before. And
2 every other broker I'm sure has adjusted commissions
3 upward.

4 Q. My point is had you not entered the 495,
5 the commission would have been automatically calculated
6 pursuant to the firm's commission equity schedule?

7 A. Right. And it was an ability of the
8 financial adviser to adjust the commission upward if
9 they wanted to, which is why this is the way we do it.

10 Again, why the system didn't tell me that
11 principle amount of the trade didn't support the
12 commission amount, I don't understand. Because on the
13 bond trading desk, it would have. And I assumed it
14 would.

15 I also assumed that this error was too
16 small and inconsequential to erase a 30-year record in
17 the brokerage business.

18 Q. Would you go back to Exhibit 8, please,
19 Claimant's Exhibit A? And it's page 122. I want to go
20 to the second column of the U5 where it says,
21 "Representative received a written customer complaint
22 and did not forward to supervisory principal."

23 Go to Exhibit 9, please, Tab 9. Take a
24 look at those pages. And when you're done looking at
25 those pages, I'll ask you a question.



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1 A. Yeah. I've seen this before.

2 Q. Okay. Let's go to the bottom of page 50
3 and the top of page 51. Did you receive this e-mail
4 from Mr. Doug Johnson on September 11th of 2009 where he
5 indicated, "Give me a contact to find out how to get my
6 money back into my account since you have not responded.
7 If I don't hear back this time, my attorney will contact
8 you next. I'm pissed. You got me into this and don't
9 respond to my e-mails."

10 Did you receive -- without the written
11 notations there, I don't know that -- did you receive
12 this e-mail from this client?

13 A. I received this e-mail and I called the
14 client immediately.

15 Q. And did you bring this e-mail where he's
16 threatening to go to his attorney to the attention of
17 any of your supervisors at the time you received it?

18 A. No, I did not. Because I did not consider
19 it a complaint. This client with the \$8,000 total
20 investment in a principle-protected investment had --
21 did not say that I was guilty of any lack of disclosure
22 or misrepresentation. He wants to find out how to get
23 his money back in his account. It's an administrative
24 issue.

25 Q. Well, he said, "My attorney will contact



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1 you next. I'm pissed you got me into this." He said
2 that as well, didn't he?

3 A. He sure did. And he is market link CD,
4 which was issued and guaranteed by Wells Fargo, paid
5 back his \$8,000 total investment shortly after this
6 conversation. And I, in fact, helped him and made the
7 notes of the entries to get the money back into his
8 checking account.

9 I didn't consider this a complaint against
10 me because he didn't mention any representation on my --
11 misrepresentation on my part or any, you know, lack of
12 total disclosure on my part.

13 And at the same time, I knew the firm was
14 basically deluged with complaints regarding market rate
15 securities and reverse convertible bonds, which I'm
16 going to address in my presentation, and had millions of
17 dollars of lawsuits. And I didn't think this was
18 something that I should bother anyone with.

19 This guy wanted to know how to get his
20 fully-protected principle back into his checking
21 account. And the other reason why he was irritated
22 about this is there's a system limitation, which Mary
23 can comment on, within our e-mail system. I would
24 receive say 20 to 50 e-mails a day. A number of those
25 were from the municipal bond department, maybe five to



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1 six a day.

2 My particular system limitation, when I
3 tried to respond to somebody's -- or reply back to
4 someone's e-mail, say someone is going to stage an
5 after-hours calling event and they want all the FCs,
6 financial consultants, to get back right away to confirm
7 their participation, when I'm trying to reply to that
8 e-mail, my system will tell me that my -- I don't have
9 the room on my system, I have to delete e-mails.

10 I think what I did on Mr. Johnson's e-mail
11 dated December 11th was accidentally delete --

12 Q. September?

13 A. September. No, it was the one before that
14 I believe I accidentally deleted. And then when I got
15 the one that says, "My attorney will contact you next",
16 I'm sure his attorney would be thrilled to take a case
17 of an \$8,000 principle-protected investment that lost
18 him no money. You know, this guy is a little bit crazy,
19 don't you think?

20 And I immediately called and cleared
21 everything up. He also told me that he went into the
22 branch and tried to get help with this and find out
23 exactly how to get his money back into his checking
24 account, and he told me that no one at the branch was
25 helpful. And I think that affected his attitude in this



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1 e-mail.

2 Q. Mr. Shaffer, you annually were required to
3 review the compliance manual of the firm and certify
4 that you had reviewed the compliance manual?

5 A. Right.

6 Q. And if you take a look at Tab 12 -- and you
7 do that on the computer, would you not?

8 A. Right.

9 Q. And if you take a look at Tab 12, does this
10 cons -- the two pages where you're certifying that you
11 had reviewed the compliance manual, are these your
12 certifications for the years indicated?

13 A. Uh-huh.

14 Q. Is that yes?

15 A. Yes, I guess so. I don't see 2009 there.

16 Q. If you go to --

17 A. Yeah, I'm --

18 Q. Okay. And then it goes to Tab 11. Do you
19 understand that Tab 11, that this is the portion of the
20 compliance manual that indicates what's -- what a
21 financial adviser is to do when the person gets a
22 written or verbal complaint?

23 A. Correct.

24 Q. Correct. And that FINRA defines a
25 complaint as any written statement of a customer or



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1 person acting on behalf of a customer alleging a
2 grievance involving the activities of those persons
3 under the control of the member in connection with
4 the --

5 A. There you go.

6 Q. -- execution or the disposition of funds?

7 A. Right.

8 Q. As a matter of policy, WFI deems a
9 complaint to include any verbal or written statement
10 from a client alleging a grievance involving the
11 activities of WFI, a WFI registered rep or employee, or
12 any investment or insured made available through WFI.

13 And I guess it's your testimony that when
14 he says, "My attorney will contact you, I'm pissed" --

15 I apologize. I thought I had turned my
16 phone off. I'm sorry.

17 I take it that you didn't view that as a
18 grievance when he said, "My attorney will contact you.
19 I'm pissed you even got me into this."

20 A. No. Because it says alleging a grievance
21 involving the activities of a WFI-registered
22 representative. He wasn't complaining about any
23 activities. He was complaining that he didn't know how
24 to get his money from the brokerage account back to the
25 checking account.



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1 Q. He said, "I'm pissed that you got me into
2 this", the investment; correct?

3 A. Yeah. He does say that.

4 Q. Okay.

5 A. The other question in my mind was whether
6 an e-mail complaint actually qualifies as a so-called
7 written complaint. And when I called him and I said,
8 "okay" -- I told him, "Here's your account number.
9 Here's what I'm going to do. I'm going to make a note
10 to get the money back into your checking account."

11 I told him, "Your market link CD will be
12 maturing shortly and you will be receiving 100 percent
13 of your principle back." At that point, I did not
14 consider this a complaint anymore. He was completely
15 satisfied with my verbal explanation.

16 And, again, at a time when a firm is
17 receiving lawsuits about all kinds of what I would call
18 unscrupulous activity, I figured the least I could do is
19 not send on some e-mail from some guy who wants to know
20 where his \$8,000 is, which, again, was completely
21 principle-protected. There was no risk to him at any
22 time.

23 Q. Now, you had a conversation with
24 Ms. Mortensen about both the trade commission issue, as
25 well as the customer complaint issue that we've



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1 discussed, did you not?

2 A. I believe I did.

3 Q. Okay. And during that conversation, you
4 were advised that your position with Wells Fargo had
5 been terminated; correct?

6 A. Well --

7 Q. Why don't you tell the panel everything you
8 recall. So when was that conversation? Was that
9 conversation on October 1st of 2006?

10 A. I believe so, October 1st or October 2nd.

11 Q. Okay. And where was the conversation held?

12 A. It was held in my former branch of Wells
13 Fargo in --

14 Q. Which branch was that?

15 A. That is the branch in Folsom, California on
16 Blue Ravine Road, Empire Ranch.

17 Q. Empire Ranch. Let me ask the question and
18 you can expand.

19 Just why don't you tell the panel, was
20 anybody else present for this conversation other than
21 you and Ms. Mortensen?

22 A. No.

23 Q. Why don't you tell the panel everything you
24 recall Ms. Mortensen saying to you and everything you
25 said to her?



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1 A. Well, I don't recall every word.

2 Q. What do you recall?

3 A. But the idea of our conversation was that I
4 was being terminated for these infractions. And Mary
5 said that she was -- again, it was based on a
6 relationship of friendship, and I believe she told me
7 that she was kind of rooting for me in the meeting with
8 Jan.

9 But then I said I adjusted the commission
10 upward in order to not be terminated for missing my
11 September sales commission goal. She told me that she
12 thought, "Oh", to herself, "why would you say that?"
13 And I said that because it was the truth.

14 And, again, as we will see, you can tell
15 from my e-mails, I was getting tired of this constant
16 sales pressure with no concern for other metrics of
17 performance or the concern for clients.

18 So yeah, in our conversation, she said,
19 "Oh, you know, I can't believe you said that",
20 basically. "I was rooting for you there with Jan. You
21 shouldn't have said that you did it so that you would
22 meet the sales commission amount or not be fired."

23 And I believe she also told me that this is
24 usually not the kind of thing that you get fired for,
25 but you've gone and done it. And I was warned before



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1 not to put any concerns in e-mail form because of
2 regulatory concerns.

3 Mary told me that she was going to a -- I
4 don't know if it's FINRA arbitration or some kind of
5 legal proceedings because of something that someone said
6 in an e-mail. I was told not to put any complaints in
7 e-mail form. Again, I had cooked my own goose in this
8 situation because of sending the e-mails and then the
9 way I responded to the questions about the \$300
10 overcharging amount.

11 She also says that the issue came up -- and
12 to tell you the truth, because of the reckless behavior
13 of Wells Fargo, I would have been happy to leave and
14 gain suitable employment with another firm. And so I
15 wouldn't have had a problem with being terminated,
16 although I did not realize that the notes on my U5 would
17 preclude me from gaining other employment.

18 And the question I asked about, because of
19 that almost relief not to be part of this program
20 anymore, is about the promissory note. And that is when
21 Mary told me that I should understand that these
22 promissory note amounts are blood money. And that was
23 her exact term. And I realize I'm under oath here and I
24 just -- I mentioned that because it gives you an insight
25 into the functioning of this dysfunctional firm.



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1 Q. Have you -- let me go back here.

2 You indicated in your conversation with
3 Ms. Mortensen on October 1st or 2nd that you had
4 adjusted the commission upward to meet your goal. Did I
5 get that correct?

6 A. Yes. But particularly because I didn't
7 know for sure where I would come in at the end of the
8 month because there was adjustments made to business I
9 had done during the month.

10 There could be charge-backs from annuities
11 if someone surrendered their policy or there was an
12 adjustment for the 50 percent of the revenue which was
13 not recognized under the Wells Fargo plan, so you never
14 really knew where you were going to come in.

15 And as we will review, I already had been
16 informed that I could be terminated for not making my
17 minimum commission amount. As it turns out, I came out
18 well above it.

19 Q. And just so I'm clear, you told Mary that
20 one of the -- Ms. Mortensen that one of the reasons you
21 adjusted the commissions up to the \$495 versus the \$269
22 or the \$136 --

23 A. It was \$300 total.

24 Q. Whatever amount.

25 A. Yeah. I told her I adjusted it up, and it



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1 was the end of the month and I'm trying to make sure I
2 didn't get fired because of all these threats. Because
3 over my time at Wells Fargo, there was no concern about
4 client complaints or violation of company policy. It
5 was always, "Hey, you're not generating enough
6 commissions."

7 Q. I believe you also told her that before the
8 termination, you had said the same thing to another
9 supervisor, correct, that you had adjusted those
10 commissions upwards to meet the revenue goal; was that
11 correct?

12 A. I said that with Jan Krug, my immediate
13 manager.

14 Q. And that was before you were advised of the
15 decision to terminate you?

16 A. Right. That was when I was asked for my
17 explanation.

18 Q. So the -- so I guess you had earlier said
19 that you hadn't done this intentionally, you know,
20 adjusted the commissions up. But based on what you told
21 Ms. Mortensen, you did do it intentionally, at least
22 under your testimony, to meet revenue goals?

23 A. I adjusted it up intentionally. And I had
24 no idea that it would exceed the maximum markup policy.
25 And, again, this is a regular business procedure, a



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1 regular activity in the course of business.

2 And if there was some way we could look at
3 the records, I'm sure we'd see that brokers adjust
4 commissions up and down regularly. And if you look at
5 my record, I adjusted commissions downward much more
6 often than I adjusted them upward.

7 Q. Anything that you haven't testified to as
8 to what you said to Ms. Mortensen or what she said to
9 you during this conversation?

10 A. Nothing that I can remember. Oh, I would
11 like to mention that in something I received in your
12 discovery packet, Ms. Mortensen says that I stated that
13 "You will never see one red dime of the promissory
14 note."

15 I deny ever making a statement like that.
16 For one thing, I don't know what "red dime" means. I
17 don't think there's really a saying called red dime. I
18 never said that.

19 Q. Do you recall anything else, testifying
20 here now, other than what you've testified to, of what
21 you said to Ms. Mortensen or what she said to you during
22 this conversation?

23 A. There might have been other items that --

24 Q. As you sit here now, do you recall
25 anything?



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1 A. Nothing more that I recall.

2 Q. And after this conversation, you then were
3 no longer employed by the firm. And you received a
4 letter asking that you repay the outstanding balance on
5 the promissory note, did you not?

6 A. Right. And, also, during that
7 conversation, I asked if I would be able to receive
8 information pertaining to my clients that I brought to
9 Wells Fargo, which was the bulk of my client base. And
10 it was not covered by the noncompete agreement that I
11 had signed in relationship to Wells Fargo clients.

12 And I also asked about the availability of
13 a T12, which if you're familiar with that, it's a
14 broker's records of commissions. Which as it turns out,
15 I didn't realize it at the time, but if you're a broker
16 and you're looking for a job and you don't have a T12,
17 you're pretty much out of luck. Or at least that's been
18 my experience.

19 Q. So is it your testimony that you've
20 recalled this now, and these are other things you
21 discussed with Ms. Mortensen at this conversation
22 October 1st or October 2nd?

23 A. Right. She told me that I would not be
24 provided a T12 because she knew that was the case
25 because another financial advisor was termed out, as she



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1 put it, and had requested a T12 and that it was
2 considered proprietary information. And that was the
3 reason she told me that I would not receive a T12.

4 Q. Now, you had received all of your payroll
5 records during the period of time that you were employed
6 by the firm, did you not?

7 A. You know, actually not. Because you had to
8 go online to actually get the payroll records.

9 Q. You had access to it?

10 A. I had access to payroll records.

11 Q. So if you chose, you could go online and
12 look at --

13 A. Right.

14 Q. And each month, you did get a commission
15 production summary, did you not?

16 A. Right.

17 Q. That had your rolling six months of
18 commissions. And it kept going forward, did it not?

19 A. Something like that.

20 Q. And that was provided to you each month.
21 So you had that available to you?

22 A. It was at least available. But, again, you
23 could never know where you were going to land for the
24 month because of adjustments that might be made at the
25 end of the month.



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1 Q. If you would, please, go to Complainant's
2 Exhibit 13. Is this a copy of a letter you received
3 from my office asking that you repay the outstanding
4 balance on the --

5 A. Correct.

6 Q. Okay. And then, also, if you would,
7 please, go to Exhibit 16, Tab 16, and I'm going to ask
8 you to keep your hand on 16. But go back to Exhibit 16,
9 that amortization schedule.

10 A. Uh-huh.

11 Q. And do you see that the item on the left,
12 the payment numbers 21, going to Number 21, that as of
13 that date, October 1st of 2009, the new balance on the
14 note -- it's the third -- --

15 A. Yeah, \$74,617.

16 Q. And that's indicated here on Exhibit 16.
17 And that was the unpaid balance at the time of
18 termination; correct?

19 A. According to the terms of the note, yes.

20 Q. And do you have any reason to dispute the
21 mathematical calculation of the interest that's there?
22 I'm not asking you to agree that you owe the money. But
23 do you have any reason to dispute the mathematical
24 calculation of the interest rate?

25 A. No. But I do have a question about the



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1 attorney's fees.

2 Q. I'm not asking you any questions about that
3 right now.

4 MR. KANE: Mr. Chairman, as it relates to
5 our promissory note case, what I'd like to do now is
6 move into evidence exhibits that I've identified
7 within -- not ones that I haven't. And there's an index
8 in the front of the binder. And so it would be Exhibits
9 1 through 13, I believe.

10 MR. SHAFFER: Before we move on, do I get
11 to ask those questions regarding attorney's fees on this
12 document that I just presented? My question is --

13 CHAIRMAN: Well, who would you ask?

14 MR. SHAFFER: Actually, I would refer a
15 question to the panel.

16 CHAIRMAN: Who put together Exhibit 16?

17 MR. KANE: 16. That would be put together
18 under my supervision. I'm not introducing 16 yet. The
19 reason for that, Mr. Chairman, is because I'm not
20 putting in my fees yet. I'll do that at the conclusion
21 of the hearing. So I'm only asking to move into
22 evidence 1 through 13.

23 MR. SHAFFER: But you asked me to review
24 16.

25 MR. KANE: I only reviewed the unpaid



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1 balance.

2 CHAIRMAN: When 16 is offered for evidence,
3 we would like to hear from you as to your view of what
4 16 says.

5 MR. SHAFFER: And I can question him?

6 CHAIRMAN: Right. So as I understand it,
7 Mr. Kane is asking to put into exhibits Number 1 through
8 13 as identified by the tabs in this notebook.

9 MR. SHAFFER: But he just brought up 16.
10 That's why I was asking.

11 CHAIRMAN: He did. Do I understand what
12 you're moving?

13 MR. KANE: Just 1 through 13. I'm not
14 offering Exhibit 16 just because it's not complete yet.

15 CHAIRMAN: Mr. Shaffer, any objections to
16 Exhibits 1 through 13?

17 MR. SHAFFER: No.

18 CHAIRMAN: Okay. They will be put into
19 evidence.

20 (Exhibits 1 through 13 were admitted into
21 evidence.)

22 MR. KANE: As it relates to our case in
23 chief on the promissory note, Mr. Chairman, I have no
24 further questions of the witness at this time.

25 CHAIRMAN: Okay. You will have an



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1 opportunity, Mr. Shaffer, to provide your testimony
2 either in rebuttal to what you've said, or in addition
3 to what you've said or on other subjects. So now we're
4 back to Mr. Kane and your next witness.

5 MR. KANE: Or he could do it now if he
6 wanted to respond to what I've asked. Would that be
7 also an option?

8 CHAIRMAN: What is your preference,
9 Mr. Shaffer, to present your case?

10 MR. SHAFFER: Yes. I'd like to respond to
11 the issues Mr. Kane has brought up for right now,
12 depending on when you'd like to take a break for lunch.

13 CHAIRMAN: We'll probably do that. How
14 long do you anticipate you will require?

15 MR. SHAFFER: I need ten minutes. Maybe
16 that would be a good thing to do before the lunch break.

17 CHAIRMAN: Sure. We may break at noon, we
18 may break after. Who knows.

19 So if Mr. Kane has no objection to your
20 responding and while it's fresh on your mind, why don't
21 you?

22 MR. SHAFFER: Sure. And as Mr. Kane had a
23 notebook here --

24 CHAIRMAN: Mr. Shaffer, before.

25 ARBITRATOR: Attorneys, I'm not familiar



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1 with this T12. Could you explain what it is, please?

2 MR. SHAFFER: A T12 is a record of the
3 commissions that a broker has generated over the last
4 12 months. T stands for trailing, I believe. It would
5 break up the broker's production between mutual funds,
6 individual stock trades, bond trades, whatever they do.

7 ARBITRATOR: I understand now.

8 MR. SHAFFER: Brokerage firms want to know
9 what kind of book you have, what kind of commissions you
10 generated.

11 CHAIRMAN: So is it a list of commissions
12 generated by a broker?

13 MR. SHAFFER: Yes.

14 CHAIRMAN: Covering a period of --

15 MR. SHAFFER: Covering the last 12-month
16 period.

17 CHAIRMAN: Of the sale of any product?

18 MR. SHAFFER: Of all products and total
19 commission. Obviously, if I walk into your brokerage
20 firm, you're going to say, "What kind of commissions do
21 you generate, Ken?"

22 CHAIRMAN: And these are the gross
23 commissions?

24 MR. SHAFFER: These are the gross
25 commissions.



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1 CHAIRMAN: Not those -- which commissions
2 are divided between the house and the financial
3 representative?

4 MR. SHAFFER: The gross commissions go to
5 the house and then the financial representative's payout
6 determines how much of the gross commission they're
7 getting in a paycheck.

8 ARBITRATOR: So he was getting 40 percent.

9 MR. SHAFFER: It's a required document to
10 obtain employment in many brokerage firms.

11 Now, just as Mr. Kane had distributed these
12 binders, I have some binders with documents that I'd
13 like to refer to. Again, these also have notes for me.
14 Again, I realize I'm under an oath of truthfulness here,
15 and everything in this I would say under oath is
16 absolutely truthful.

17 CHAIRMAN: Okay. Now, are you going to
18 refer to this booklet now in your testimony?

19 MR. SHAFFER: Just as Mr. Kane did to his.

20 CHAIRMAN: All right. Specify exactly what
21 you're going to refer to so Mr. Kane has an opportunity
22 to accept it.

23 MR. SHAFFER: I'm on the second page of
24 this document, and it's titled "Issues".

25 CHAIRMAN: And you're going to testify in



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1 response to what Mr. Kane asked you about?

2 MR. SHAFFER: Only in response to the
3 promissory note.

4 CHAIRMAN: Okay. And this is your writing
5 that you put together.

6 MR. SHAFFER: This is my writing. I have
7 had no --

8 CHAIRMAN: And are you going to read it as
9 your testimony?

10 MR. SHAFFER: Kind of. I'm going to use it
11 as notes like Mr. Kane did. Yeah, basically, I'm going
12 to read it from notes like Mr. Kane did.

13 CHAIRMAN: What are your thoughts,
14 Mr. Kane?

15 MR. KANE: This is not what I did, just so
16 we're clear. The -- I don't know if it's a brief or
17 what, but the first 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
18 12, 13, 14, 15, 16, 17, 18, 19 --

19 MR. SHAFFER: It's about 90 pages long.

20 MR. KANE: The first 24 or 25 pages have
21 nothing to do with documents or exhibits. It's like a
22 brief, and I object to it. If he wants to testify, he
23 can. As far as the exhibits, they start at about the
24 25th page.

25 ARBITRATOR: Is that the page that says



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1 "2002 update of the DL"?

2 MR. KANE: No. It's a page that has
3 exhibits. There's about 25 pages in it.

4 CHAIRMAN: You were going to say?

5 MR. KANE: And it starts with this Number
6 1, payroll records. I'm going to look quickly. I
7 suspect I don't have any objections to any of this.

8 CHAIRMAN: Let me clarify. As I understand
9 it, Mr. Shaffer, you want to talk about the promissory
10 note only; is that right?

11 MR. SHAFFER: Exactly, at this point.

12 CHAIRMAN: And that is what is identified
13 on the first page of this booklet.

14 MR. SHAFFER: Right.

15 CHAIRMAN: In other words, you don't intend
16 to refer to the wrongful termination and other items
17 that are indicated in this booklet.

18 MR. SHAFFER: Just addressing the
19 promissory note.

20 CHAIRMAN: All right. You may testify as
21 to the promissory note which is -- was quizzed by
22 Mr. Kane.

23 MR. SHAFFER: Thank you.

24 CHAIRMAN: Go ahead.

25 MR. SHAFFER: Originally described as a



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1 bonus, it was never explained and I never understood
2 that amounts could be demanded to be repaid based on a
3 termination or that conditions would be placed on my
4 employment, sales revenue bonus which were not a
5 condition at the time of my hiring or when the
6 promissory note amount was awarded.

7 Additionally, the demand for lump-sum
8 payment violates contract law in that it constitutes a
9 penalty for an employee's termination, especially in
10 light of my precarious financial condition. These
11 conditions result in the promissory note being
12 unconscionable and one-sided.

13 Civil Code S1670.5 states that
14 unconscionable contracts or provisions which are
15 one-sided may be found invalid.

16 My second and most important point I
17 believe is that page 2 of the promissory note agreement
18 states, "This note shall be interpreted, enforced and
19 governed by the laws of the State of California."

20 California State Labor Code states that
21 "balloon payment demands for loans made to employees at
22 the time of termination were not allowed even if the
23 employee has given his consent to such payments."
24 That's from Section 11.2.5 of this particular code. And
25 it was in a case that was decided, the Barnhill versus



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1 Sanders, which I have copied information from.

2 By the way, all of this information
3 pertaining to California employment law can be found at
4 the site, excerpts as you see at the bottom, excerpts
5 from the California Division of Labor Standards and
6 Enforcement Policies and Interpretations Manual I've
7 made here. And on my cover page, there is a website
8 address to these particular labor codes.

9 Again, the labor code says that balloon
10 payment demands for loans made to employees made at the
11 time of termination are not allowed even if the employee
12 has given his or her consent to such payments.

13 And to go on, California labor law also
14 defines promissory notes as adhesion contracts which
15 are, despite this boilerplate language, drafted by one
16 party without opportunity for negotiation which is a
17 situation that is certainly fulfilled.

18 These types of contracts are subject to
19 greater scrutiny and interpretation and enforcement in
20 order to modify or nullify harsh terms which defeat the
21 reasonable expectations of the parties. And, again,
22 I've noted the labor code which applies there.

23 Section 32.2.2 states that an adhesion
24 contract -- or there's a typo there. I'm sorry -- and
25 many throughout this, I'm sure. Section 32.2.2 states



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1 that "An adhesion contract which does not fall within
2 the reasonable expectations of the weaker or adhering
3 party", which would be me, "is not enforceable against
4 him." Promissory note qualifies under all these
5 provisions.

6 Then I bring into discussion the fact that
7 the promissory note is described as net pay and net pay
8 distribution. That's my Exhibit 1. But, also, Mr. Kane
9 had used that as one of his exhibits, if you'll
10 remember.

11 And I was bringing your attention to the
12 fact that the supposed loan amount is shown as net pay
13 on a wage statement. And it's shown as net pay, net pay
14 distribution is part of what it's described as a
15 biweekly payroll report. That's the same report
16 Mr. Kane is referring to.

17 This is confusing and misleading also
18 because the promissory note meets the definition of a
19 bonus as defined in Section 22.5.5 of this same
20 employment code, an amount promised in addition to the
21 monthly commission due as compensation paid for a
22 specific result, the result being me reaching that
23 minimum level of production.

24 And so it is described as a bonus according
25 to California employment law. I think we're all dealing



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1 under the rules and regulations of the California
2 employment law. For that reason, I don't understand why
3 we're even here to discuss this item. It's plainly not
4 demandable.

5 And because it's not and because this is a
6 violation of California employment law, I believe that
7 the law firm Kane and Fischer, not so much Mr. Kane, but
8 definitely Mr. Choo and everyone involved in this, is
9 guilty of intentional infliction of emotional distress.

10 CHAIRMAN: Anything else about the
11 promissory note that you were asked --

12 MR. SHAFFER: That's it about the
13 promissory note.

14 CHAIRMAN: Mr. Kane, what is your pleasure?

15 MR. KANE: I read that more as closing
16 argument, so anything I'm going to retort to that would
17 be closing argument. I don't have anything to ask this
18 witness at this time.

19 CHAIRMAN: Your next witness would be who?

20 MR. KANE: As to the promissory note, I
21 have no witnesses to present and no additional exhibits
22 other than I want to reserve my right to, number one,
23 present a defense to the counterclaim; and number two,
24 at the conclusion of the hearing, to present the
25 attorney fee affidavit and costs.



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1 So as it relates to the promissory note,
2 except for these reservations, we have no additional
3 exhibits to present or witnesses to present.

4 CHAIRMAN: In the whole proceeding?

5 MR. KANE: As it relates to the promissory
6 note, we rest. However, I'm reserving my right to
7 present a defense to the counterclaim and to present the
8 attorney's fees at the end of the hearing.

9 CHAIRMAN: So you're saying that the
10 prosecution, for lack of a better term, you rest. And
11 then the case would go to Mr. Shaffer to present his
12 case with exception of showing the attorney's fees and
13 in response to any counterclaim of his.

14 Why don't we take a noon break at this
15 point and be back here by 1, because I suspect we're
16 going to have some discussion.

17 (Thereupon, a break was taken.)

18 CHAIRMAN: We're on the record and we had a
19 discussion earlier with regard to explained decisions,
20 and Mr. Shaffer indicated that he was interested in
21 that. And we asked Mr. Kane for the rules and
22 regulations. What have you found out, Mr. Kane?

23 MR. KANE: Yes, Mr. Chairman, and I'm happy
24 to show it to Mr. Shaffer as well as the panel. It's
25 Rule 13904G called explained decisions. And it says



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1 this paragraph G applies only when all parties jointly
2 request and explain decision.

3 CHAIRMAN: And what does that paragraph
4 say?

5 MR. KANE: Well, it starts with Exhibit F,
6 where it says, "Award may contain a rationale",
7 underline "the award". Explained decisions, this
8 paragraph G only applies when parties request an
9 explained decision.

10 An explained decision is a fact-based award
11 stating the general reasons for the Arbitrator's
12 decision. Conclusion of legal authorities and damage
13 calculations is not required.

14 Three, parties must make any request for an
15 explained decision no later than the time of the
16 prehearing exchange of the document, and the list under
17 13514D. The chairperson of the panel will be
18 responsible for writing the explained decision.

19 The chairperson will receive an additional
20 honorarium of \$400 for writing the explained decision as
21 required by this paragraph G. The panel will allocate
22 the cost of the chairperson's honorarium to the parties
23 as the final award.

24 CHAIRMAN: Okay. So it sounds like on two
25 counts, there would not be an explained decision.



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1 Number one, not all parties have requested it; and
2 number two, it was not provided in the time period that
3 was provided.

4 MR. SHAFFER: That's true, except
5 interpreting that language a little different way, it
6 says that that rule applies only when all parties are
7 requesting an explained decision.

8 Is there any passage that talks about the
9 situation where only one party is --

10 MR. KANE: No. Because --

11 CHAIRMAN: Why don't you show him the rule?

12 MR. SHAFFER: Because it says -- right at
13 the outset, it says, "This only applies to situations
14 where both parties are requesting an explained
15 decision." And you are not requesting an explained
16 decision.

17 And I don't understand why that would be a
18 rule, because the decision hasn't been made yet
19 hopefully. So why would there be a problem with me
20 getting an explained decision?

21 CHAIRMAN: Let me also observe that this is
22 a fairly new add-on within a year.

23 MR. KANE: I believe so.

24 CHAIRMAN: Previously, there wasn't such an
25 option. And previously -- there's a form that FINRA



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1 uses to prepare the final award after -- with the
2 information that the panel gives to the FINRA staff.
3 And this talks about something greatly -- in addition to
4 the form which addresses the issues as have been
5 presented in the claim and the counterclaim and the
6 answer. So that may be why the rules are peculiar,
7 because it really breaks the mold, to some extent.

8 MR. KANE: We do not request explained
9 decisions. I'm not requesting one now. If I wanted an
10 explained decision, I would have requested one in the
11 time provided in accordance with the rule, and we didn't
12 and we're not.

13 CHAIRMAN: So I think you'll find the award
14 will probably have more explanation in -- than you may
15 have anticipated.

16 MR. SHAFFER: Okay.

17 CHAIRMAN: But it may not be enough for
18 you.

19 MR. SHAFFER: My last letter on this issue
20 was possibly an exception could be made because my case
21 administrator, Bianca Phillips, has been ill or out of
22 the office. I didn't have anyone to talk to.

23 But it doesn't make any difference really
24 because it doesn't change the decision, does it?

25 CHAIRMAN: No. And Joanna Lamb has been



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1 taking Ms. Phillips' place in the meanwhile. And she
2 seems okay.

3 All right. So as I understand the
4 situation, the claimants have rested except for
5 introduction of evidence regarding requested attorney's
6 fees. And as to rebuttal of any testimony or evidence
7 that is presented by Mr. Shaffer in -- by way of
8 counterclaim, which means, Mr. Shaffer, we now look to
9 you for you to present your case of counterclaim. And
10 you may proceed.

11 MR. SHAFFER: Thank you. I feel that there
12 have been a number of infractions that have injured me
13 both professionally and emotionally. The first one I'd
14 like to address would be the situation of wrongful
15 termination.

16 And as is in my notes, the notes of my
17 presentation, I was terminated without notice based on
18 two accidental and incidental violations of company
19 policy, an inadvertent overcharge of approximately \$300
20 on two trades and the failure to pass on an e-mail from
21 a complaint who was inquiring on instructions as to how
22 to transfer his account balance to his checking account.

23 The Wells Fargo response to my counterclaim
24 describes these first clients as Wells Fargo clients, so
25 this is just a little bit of my personal thing. The



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1 account in question for the overcharging belongs to my
2 friends and clients for over 15 years, which I
3 transferred to Wells Fargo from my previous firm.

4 And the answer to my counterclaim, Wells
5 Fargo described this account as Wells Fargo's, that I
6 overcharged Wells Fargo's client. I'd just like to
7 clarify. These people are friends and clients of mine
8 for 15 years. I transferred them to Wells Fargo from my
9 previous firm.

10 And Exhibit 7 is a letter from the
11 Winneger's that just says that they have worked with me
12 for years and they felt that I have done a great job for
13 them. And as you know, there was no client complaint in
14 this matter. This would be considered a trade error for
15 anyone not being subject to discrimination.

16 Financial advisors are expected to make
17 decisions regarding commission amounts regularly. Many
18 individual security trades that I processed were
19 discounted. Financial advisors are also allowed to
20 decide when a situation allows for a higher commission.

21 FINRA rule IM 2440-1 regarding markup
22 policies states that the 5 percent policy is a guide,
23 not a rule. So I would suggest that this is not even a
24 FINRA violation. I had never had an incident relating
25 to overcharging and the small amount involved certainly



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1 shows that this was not intentional.

2 A one-time accidental overcharging of a
3 client is not specified as grounds for termination in
4 any employment manual from Wells Fargo. Please see the
5 e-mail from Mary Mortensen, which we've already
6 discussed. The total overcharge amount comes to \$284.
7 The account in question has a value of \$132,000, had at
8 that point.

9 I visited with the Winneger's. The account
10 value is significantly higher now. The account in
11 question had a value of \$132,000. This is an accidental
12 and trivial error, and I would add not subject to
13 termination.

14 The second, a supposed client complaint
15 made no mention of misstatements or erroneous
16 disclosures on my part or any wrongdoing on my part. He
17 wanted to know how to return his funds to the bank
18 account when his CD matured. There was no loss or
19 potential of loss because this was a Wells Fargo
20 principle guaranteed investment. I immediately called
21 upon receiving the second e-mail.

22 I believe that I accidentally deleted his
23 first e-mail due to system constraints which I explained
24 earlier when responding to another e-mail. And our
25 conversation rectified his misunderstanding. There was



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